

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA et al.,

*Plaintiffs,*

v.

AMERICAN AIRLINES GROUP INC. and  
JETBLUE AIRWAYS CORPORATION,

*Defendants.*

Case No. 1:21-cv-11558-LTS

**PLAINTIFFS' UNOPPOSED MOTION TO TEMPORARILY IMPOUND  
CONFIDENTIAL MATERIALS RELATING TO PRETRIAL FILNGS**

The United States of America, the State of Arizona, the State of California, the District of Columbia, the State of Florida, the Commonwealth of Massachusetts, the Commonwealth of Pennsylvania, and the Commonwealth of Virginia (collectively, Plaintiffs) respectfully move the Court under Local Rule 7.2 to temporarily impound the confidential materials described below.

**Pretrial Brief.** Plaintiffs' Pretrial Brief includes statements from two documents, PX0805 and PX0807, which are ordinary course business documents that Defendants assert should be redacted or sealed from the public record at trial. Although Plaintiffs do not necessarily agree that these documents should be redacted or sealed at trial, Plaintiffs seek leave to redact these statements from the public version of their pretrial brief for a limited time period so the Court may rule on Defendants' proposed confidentiality assertions.

**Plaintiffs' Response to Defendants' *Daubert* Motion.** Plaintiffs' response to Defendants' "*Daubert* Motion And Motion In Limine Concerning Plaintiffs' Expert's Merger Simulation Model" attaches three exhibits that include information Defendants assert should be redacted or sealed from the public record at trial. Exhibits H and Q to Plaintiffs' Response are

the initial and reply expert reports, respectively, of Professor Nathan H. Miller. Exhibit I to Plaintiffs' Response is PX0334, which is an ordinary course business document. Although Plaintiffs do not necessarily agree that these documents should be redacted or sealed at trial, Plaintiffs request leave to seal Exhibits H and Q and redact Exhibit I to Plaintiffs' Response for a limited time period so the Court may rule on Defendants' proposed confidentiality assertions.

**Proposed Final Pretrial Order.** Exhibit F to the parties' proposed final pretrial order contains Plaintiffs' position on certain evidentiary objections to trial exhibits that remain in dispute. This exhibit attaches as Appendix A several exemplar documents, two of which, PX0678 and PX0718, Defendants assert should be redacted or sealed from the public record at trial. Although Plaintiffs do not necessarily agree that these documents should be redacted or sealed at trial, Plaintiffs request leave to seal PX0678 and redact PX0718 from the public version of the proposed final pretrial order for a limited time period so the Court may rule on Defendants' proposed confidentiality assertions.

To the extent Defendants seek to protect the confidentiality of their ordinary course business documents, the burden is on Defendants to show why the information should not be disclosed on the public record. A party moving to seal or impound court records at trial must overcome the presumption that the public has a right to see and copy "materials on which a court relies in determining the litigants' substantive rights." *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 13 (1st Cir. 1986). "That presumption, so basic to the maintenance of a fair and open judicial system and to fulfilling the public's right to know, cannot be easily overcome." *F.T.C. v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 412–13 (1st Cir. 1987). In deciding such a motion, courts weigh the public's right of access against the parties' competing interests in confidentiality. *See In re Providence Journal Co., Inc.*, 293 F.3d 1, 13 (1st Cir. 2002). "To seal such filings, the party

seeking to overcome the presumption of public access must demonstrate significant countervailing interests, like the existence of trade secrets in the documents or confidential business information.” *Skyhook Wireless, Inc. v. Google, Inc.*, Case No. 10-11571-RWZ, 2015 WL 13675231, at \*2 (D. Mass. Feb. 18, 2015).

Plaintiffs understand Defendants intend to move the Court to redact or seal the ordinary course business documents described above at trial. Plaintiffs request that the Court temporarily impound this information until such time as the Court rules on Defendants’ anticipated motion to redact or seal these documents at trial. If Defendants do not make such a motion, the information will become public absent further order of the Court. L.R. 7.2(b). Plaintiffs’ motion is narrowly tailored to avoid infringing any more than necessary upon the public’s right to access judicial records. Plaintiffs seek only temporary impoundment, and Plaintiffs do not seek to redact or seal any documents beyond those specified above. Plaintiffs have conferred with Defendants and Defendants do not oppose this motion.

Plaintiffs therefore respectfully request the Court to issue an order of temporary impoundment.

Dated: September 9, 2022

Respectfully submitted,

/s/ William H. Jones, II

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*Attorneys for the State of Florida and the  
Commonwealth of Massachusetts, and on  
behalf of the Plaintiff States*

**LOCAL RULE 7.1 CERTIFICATION**

Pursuant to Local Rule 7.1(a)(2), I hereby certify that I conferred with counsel for Defendants on September 9, 2022. Defendants confirmed that they do not oppose this motion.

/s/ James H. Congdon

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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Patricia L. Sindel

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